IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WA.No. 434 of 2005()

AGAINST THE JUDGEMENT/ORDER IN WPC.16433/2003 Dated 12/11/2004
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APPELLANT: PETITIONER

V.P.A.BACKER,
S/O. LATE V.P.MOIDEEN KOYA, 'GEEENWHICH',
PULIKKAT ROAD, P.O.NADAKKAVU, KOZHIKODE.

BY ADV. SMT.K.V.RESHMI

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT TAXES (D) DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

3. THE DEPUTY COMMISSIONER (APPEALS)
AGRICULTURAL INCOME TAX AND SALES TAX,
KOZHIKODE.

BY GOVERNMENT PLEADER SRI. T.B. HOOD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 11/12/2006, THE COURT ON 18.12.2006 DELIVERED THE
FOLLOWING:

V. K. BALI, C.J. &
C.N.RAMACHANDRAN NAIR, J.

W.A. NO. 434 OF 2005&
C.M. Appln. No.505 of 2005

Dated this the 18th day of December, 2006

JUDGMENT

Ramachandran Nair,J.

Delay condoned.

2. Writ Appeal is filed against the judgment of the learned single Judge rejecting petitioner's claim for retrospective increase of rent in respect of a building given by the petitioner to Commercial Taxes Department on lease. We heard counsel for the appellant and Government Pleader. Appellant's case is that appellant is entitled to revision of rent from the date of expiry of lease. However, on facts it is found that even after the expiry of the tenure of the lease, appellant allowed the respondents to continue occupation of the building and received rent for such period. As and when appellant demanded revision of rent, Government granted it, but from the date of demand of revision of rent following general orders of the Government referred to in the judgment. Since appellant did not demand revision of rent on

expiry of lease period, it is obvious that appellant had no objection in respondents continuing to occupy the building on same terms including that pertaining to rent. We do not think appellant can demand rent increase retrospectively after allowing the respondent to occupy the building at the agreed rate of rent because respondents had the option to vacate the building when higher rent was demanded by the appellant for continuation of the same. In this regard we find that the provision in the Government order referred to in the judgment to grant revision of rent from the date of demand from the owner is perfectly reasonable. Therefore appellant's claim of revision of rent retrospectively, that is for the period prior to the date of demand of revision of rent, was rightly rejected by the learned single Judge.

We therefore dismiss the Writ Appeal.

(V. K. BALI)
Chief Justice

(C.N.RAMACHANDRAN NAIR)
Judge